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11 IN THE UNITED STATES DISTRICT COURT

12 DISTRICT OF ALASKA

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Sally C. Purser,	)	) MOTION TO FILE SUPPLEMENTAL BRIEF
Plaintiff,	)	)
v.	)	)
Josef F. Boehm, Allen K.	)	)
Bolling, and Bambi Tyree,	)	)
Defendants.	)	CASE NO.: A05-0085 (JKS)
	)	)
	)	)
	)	)
	)	)

I. DEFENDANT BOEHM SEEKS PERMISSION FROM THE COURT TO FILE A  
SUPPLEMENTAL BRIEF REGARDING HIS REPLY IN OPPOSITION TO  
SUMMARY JUDGMENT.

On December 14, 2006, Plaintiff Purser filed a Motion for Summary Judgment. (See Docket No. 123). This document is attached and marked Exhibit A.

On December 29, 2006, Defendant Boehm filed a Response in Opposition to Summary Judgment. (See Docket No. 130). This document is attached and marked Exhibit B.

1        Due to newly obtained transcripts, sworn declarations, and  
2 sworn testimony, Defendant Boehm respectfully requests to file a  
3 supplemental brief. It is attached and marked Exhibit C. The  
4 supplemental brief contains the following:

5        **1. Recorded transcript of Miranda Ditullio**

6        Ms. Ditullio submitted to a interview with Boehm's  
7 investigator Terry Shertliff. Her statements contradict Purser's  
8 allegations and lend further support to the evidence presented in  
9 Boehm's initial opposition.

10        **2. Sworn Testimony of Dr. Jacobsen**

11        In response to Plaintiff's assertion that Dr. Jacobsen's  
12 report is not sworn testimony, Boehm submits Dr. Jacobsen's sworn  
13 testimony confirming the contents of his report.

14        **3. Declaration of Josef Boehm**

15        In response to Plaintiff's assertion that Boehm's responses to  
16 discovery are not sworn under penalty of perjury, Boehm submits a  
17 declaration specifically denying each of the allegations set forth  
18 in the affidavit of Purser and Tyree.

19        **4. Declaration of Terry Shurtleff**

20        Mr. Shurtleff's declaration under penalty of perjury sets  
21 forth the circumstances under which his interviews were knowingly  
22 recorded, accurately recorded and accurately transcribed.

23        **5. Plaintiff's Expert Dr. Rose, Psychological Evaluation of  
24 Purser.**

1       Boehm submits Dr. Rose's report to bring out her inconsistent  
2 statements and lack of candor when being interviewed by her own  
3 expert. In addition, Dr. Rose's report is very telling when  
4 describing Purser's psychological state and character type.

5       **II. UNDER LOCAL RULE 7.1(h)(B)(i) AND (ii), THE COURT SHOULD**  
6       **GRANT DEFENDANT BOEHM'S REQUEST TO FILE A SUPPLEMENTAL**  
7       **BRIEF.**

8           In considering whether to allow a party to file a supplemental  
9 brief, the court will consider "(i) whether the material was  
10 available to the party when briefs were due, and (ii) whether the  
11 pertinence of the material was established at the times for  
12 briefing." See Local Rule 7.1(h)(B)(i) and (ii).

13           "The standard for granting leave to file a surreply is whether  
14 the party making the motion would be unable to contest matters  
15 presented to the court for the first time in the opposing party's  
16 reply." *Lewis v. Rumsfeld*, 154 F.Supp.2d 56, 61 (2001). In  
17 *Alexander*, the court granted motion for leave to file a surreply  
18 where the reply included a declaration that was not included in her  
19 original motion, which raised "matters presented to the court for  
20 the first time." *Alexander v. Federal Bureau of Investigation*, 186  
21 F.R.D. 71, 74 (D.D.C.1998).

22           Throughout Plaintiff Purser's reply to Boehm's Opposition to  
23 Summary Judgment, she makes arguments that Boehm's submitted  
24 affidavits and statements are not sworn and thus not admissible.  
25 Here, Defendant Boehm has gained access to the sworn affidavits and  
26 testimony and seeks to submit them. If Boehm is not allowed to  
27 submit the sworn affidavits and testimony, he would be unable to

1 contest matters presented to the court for the first time in  
2 Plaintiff Purser's reply.

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4       **III. CONCLUSION**

5           Defendant Boehm respectfully requests the permission of the  
6 court to file a supplemental brief to docket number 123.

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9 DATED this 1st day of February, 2007 at Encino, California.

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